

§ 1012.2

acquired while performing official duties or because of an employee's official status;

(3) Testimony by employees in any judicial or administrative proceeding in which the United States or the Presidio Trust, while not a party, has a direct and substantial interest;

(4) Official records or certification of such records for use in Federal, State, territorial or Tribal judicial, legislative or administrative proceedings.

(b) In this part, "employee" means a current or former Presidio Trust employee, or Board member, including a contractor or special government employee, except as the Presidio Trust may otherwise determine in a particular case.

(c) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States or the Presidio Trust is a party;

(3) Federal administrative proceedings;

(4) Federal, State and Tribal criminal court proceedings;

(5) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the Presidio Trust. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the Presidio Trust. See 5 CFR 2635.702(b), 2635.807(b).

(6) Testimony by employees as expert witnesses on subjects outside their official duties, except that they must obtain prior approval if required by §1012.11.

(d) This part does not affect the rights of any individual or the procedures for obtaining records under the Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Presidio Trust FOIA and Privacy Act regulations are found at parts 1007 and 1008 of this chapter.

(e) Nothing in this part is intended to impede the appropriate disclosure under applicable laws of Presidio Trust information to Federal, State, territorial, Tribal, or foreign law enforce-

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ment, prosecutorial, or regulatory agencies.

(f) This part only provides guidance for the internal operations of the Presidio Trust, and neither creates nor is intended to create any enforceable right or benefit against the United States or the Presidio Trust.

§ 1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?

(a) Except for proceedings covered by §1012.1(c) and (d), it is the Presidio Trust's general policy not to allow its employees to testify or to produce Presidio Trust records either upon request or by subpoena. However, if the party seeking such testimony or records requests in writing, the Presidio Trust will consider whether to allow testimony or production of records under this part. The Presidio Trust's policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Presidio Trust employee may testify or produce records in any proceeding to which this part applies unless authorized by the Presidio Trust under §§1012.1 through 1012.11. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

RESPONSIBILITIES OF REQUESTERS

§ 1012.3 How can I obtain employee testimony or Presidio Trust records?

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a "Touhy Request;" see §1012.5 and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)); and

(2) A statement that you will submit a valid check for costs to the Presidio Trust, in accordance with §1012.6, if your Touhy Request is granted.

(b) To obtain official Presidio Trust records, you must submit:

(1) A Touhy Request; and

(2) A statement that you agree to pay the costs of search and/or duplication in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this chapter, if your Touhy Request is granted.